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August 8, 2022

VIA ECOURTS FILING

Hon. Evelyn Padin, U.S.D.J.
United States District Court, District of New Jersey Newark
M.L. King, Jr. Federal Bldg. & Courthouse
Room MLK 4C
50 Walnut St.
Newark, NJ 07102

RE: **LUKE, CYPRIAN VS. TOWN OF DOVER, ET AL.**

Our File No. : 91068 ELH
Docket No. : 2:21-CV-11233-EP-MAH

Dear Judge Padin:

This firm represents Defendant Town of Dover Police Sgt. Michael Pier ("Sgt. Pier") in this litigation. Plaintiff Cyprian Luke ("Plaintiff") is represented by Vivake Prasad, of Emery, Celli, Brinckerhoff, Abady, Ward & Maazel, LLP, and by Andrew W. Dwyer. Defendants Town of Dover, and Dover Police Officers Robert Fenske and Ilmi Bojkovic are represented by Peter King of King, Moench & Collins, LLP. We are writing on behalf of defendants, pursuant to the Court's July 22, 2022 Order (Doc. 26) directing counsel to file a joint letter providing (1) a summary of the claims and defenses and (2) a status report as to discovery, settlement discussions, and other issued to be addressed.

Methfessel & Werbel, Esqs.
Our File No. 91068-ELH
Page 2

I. Summary of Claims

Plaintiff filed his complaint in the U.S. District Court in Newark on May 14, 2021. According to the allegations, in the early morning hours of May 19, 2019, Plaintiff, then nineteen, was aggressively approached by Sgt. Pier as Plaintiff was walking with friends through a parking lot in Dover. Other Dover officers (Fenske and Bojkovic) also arrived on the scene and assisted in the arrest. Plaintiff alleges that Sgt. Pier grabbed him, tackled him to the ground, and punched him in the face four to five times. Plaintiff alleges that Sgt. Pier kept shouting “stop resisting,” as he continued to punch Plaintiff, even though Plaintiff alleges he was pinned to the ground at that time. Plaintiff alleges that because the officers could not justify taking Plaintiff to jail because of the beating, they called an ambulance instead.¹

In Count One of the Complaint, Plaintiff alleges Fourth and Fourteenth Amendment violation of rights pursuant to 42 U.S.C. §1983 for use of excessive force. Count Two alleges assault and battery. Count Three alleges failure to intervene in violation of 42 U.S.C. §1983.

Defendants’ position is that on February 2, 2019, Plaintiff’s ex-girlfriend accused him of physically attacking her, leading to a Morris County Grand Jury to indict Plaintiff on third-degree aggravated assault

¹ Upon information and belief, Plaintiff was taken to St. Luke’s Hospital after his arrest, and released back into custody the next day.

Methfessel & Werbel, Esqs.
Our File No. 91068-ELH
Page 3

charges. Plaintiff had also been charged with a fourth-degree offense for violating a Court “no contact” order. On May 19, 2019, while on patrol, Sgt. Pier drove to a Krauser’s convenience store in Dover, on a report of a disturbance. Upon arrival, Sgt. Pier spotted approximately seven to ten individuals. Sgt. Pier identified Plaintiff, and told him he was under arrest. Plaintiff resisted and engaged Sgt. Pier and Officer Fenske in a physical struggle. Sgt. Pier stated that Plaintiff attempted to bite him, and that Officer Fenske pulled out his pepper spray, but did not use it. According to police, the officers employed reasonable and necessary force to subdue Plaintiff, in light of continued resistance to arrest, and an attempt by Plaintiff to grab Sgt. Pier’s revolver from his duty belt.²

On June 3, 2021, the *New Jersey Herald* reported that Plaintiff was found not guilty by reason of insanity in a carjacking that occurred in July 2020, when he stole a Toyota Tacoma in Stanhope, which resulted in a multiple police response across two counties and ended in a crash in Rockaway Borough. Plaintiff told doctors that he hears demonic voices that threaten him, and that he believes the police are out to harm him. He has been diagnosed with Schizotypal personality disorder, major depressive disorder, and post-traumatic stress disorder. Plaintiff was

² On July 6, 2022, the Attorney General’s Office of Public Integrity & Accountability completed its investigation into Plaintiff’s allegations of Excessive Use of Force, and determined that the allegations were “Not-Sustained.”

Methfessel & Werbel, Esqs.
Our File No. 91068-ELH
Page 4

placed in Greystone Park Psychiatric Hospital in Morris Plains, New Jersey, where he currently is confined.

II. Status of Discovery, Settlement Negotiations

Plaintiff and Defendants have exchanged interrogatories and document requests, and each party has responded to written discovery. Counsel for the Town of Dover defendants states that he plans to respond to discovery on August 9, 2022. There have been no discovery motions, or any motions whatsoever in this case to date. No depositions have been scheduled or taken to date, as the parties were attempting to see if this case could be resolved prior to engaging in further discovery. Each party anticipates retaining police experts. At the last Case Management Conference, Magistrate Hammer ordered that all fact discovery be completed by November 25. Affirmative expert reports are due by December 31, and responsive expert reports are due by February 10.

The parties have also engaged in settlement discussions. Plaintiff has made an initial settlement demand which was rejected by Defendants. Defendants made a counter settlement proposal which was rejected by Plaintiff. While the parties' settlement positions are still far apart, the parties concur that settlement would be in everyone's best interests, and are optimistic that settlement can ultimately be reached. Judge Hammer agreed to conduct a settlement conference with the parties on October 28. Settlement statements of five pages or less are due on October 21.

Methfessel & Werbel, Esqs.
Our File No. 91068-ELH
Page 5

Please let us know if you have any questions, or wish to discuss this matter with the parties.

Respectfully submitted,

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